

CHARLES H. WHITLOCK

IBLA 81-411

Decided August 28, 1981

Appeal from the decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W-74038.

Affirmed.

1. Evidence: Sufficiency -- Mineral Lands: Mineral Reservation -- Oil and Gas Leases: Lands Subject to

The effect of a notation on a document stating that in a conveyance to the State of Wyoming "all petroleum" was reserved to the United States is overcome by evidence of more authoritative records establishing that petroleum was not reserved, and that such a reservation would have been contrary to the statute which conditioned the conveyance under the prevailing circumstances, so that an oil and gas lease offer for the purported reserved petroleum was properly rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

A noncompetitive over-the-counter oil and gas lease offer is properly rejected where the subject lands were previously held in oil and gas leases which expired and have not subsequently been posted by BLM as available for simultaneous noncompetitive offers.

APPEARANCES: John C. Brackley, Esq., Lander, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Charles H. Whitlock filed "over-the-counter" lease offer W-74038 with the Wyoming State Office of the Bureau of Land Management (BLM), for all of sec. 27, T. 31 N., R. 99 W., sixth principal meridian, Fremont County, Wyoming. His offer was rejected by BLM's decision dated February 23, 1981, for the stated reasons that (1) the United States does not own the oil and gas in the SW 1/4 NW 1/4, W 1/2 SW 1/4, sec. 27, and (2) the remaining lands in sec. 27 were previously leased for oil and gas under lease W-49088, and therefore can only be made available for lease again pursuant to the simultaneous filing procedures, and thus are not subject to "over-the-counter" offers.

Whitlock appealed, asserting first that the United States does own the oil and gas in the SW 1/4 NW 1/4 and the W 1/2 SW 1/4 of sec. 27. In support of this contention he has furnished a machine copy of what purports to be "a partial copy" of the "patent" dated May 23, 1916, which is on record in the office of the clerk, Fremont County in book 40, page 549, of the deed records.

[1] As a document for general reliance, this instrument is somewhat irregular. First, it is not a patent, but a certified transmittal by the Assistant Commissioner of the General Land Office of "List No. 22." 1/ List No. 22 (which was not provided by appellant), according to the transmittal, embraces "160 acres, in the Lander land district, selected by the State of Wyoming, under its grant for a Miner's [sic] Hospital, and to which the State has elected to take title with a reservation of all phosphate to the United States, in accordance with the Act of July 17, 1914 (38 Stat., 509) * * *." The land is not otherwise described. Typed in some convenient white space on the document, and wholly out of context, appears:

Reserving to U.S.
all petroleum --
Miner's Hospital 160.00 acres

The machine copy provided by appellant includes, at the bottom edge, a fragment of "List No. 06163," upon which it may be seen that part of a land description has been hand-altered by inking in a "W" over some other letter.

The administrative record compiled by BLM includes five pages of machine reproductions of documents. The first of these is apparently a cover sheet or title page for list 22, with various stamped, typed, and handwritten notations, all of which are partially or totally illegible. The word "phosphate" may be discerned in two of these notations, but it is impossible to tell whether any reference is made to petroleum. The second page references List No. 22 followed by "List No. 06163," apparently a component of List No. 22. This describes the 160 acres being granted as the W 1/2 SW 1/4, SW 1/4 NW 1/4, sec. 27,

1/ At that time, patents were not issued to states for land grant lieu selections, the conveyances being effected by approved "lists," commonly called "clear lists."

and an indecipherable 40-acre subdivision in sec. 28, T. 31 N., R. 99 W. 2/ Following these land descriptions is the notation, "Patent to contain provisions, reservations, conditions, and limitations of the Act of July 17, 1914 (38 Stat. 509)," followed in turn by the handwritten notation, "Reserving all phosphate to U.S." There is no reference to a reservation of petroleum.

The third reproduced page is a document dated April 24, 1916. It is a certificate by an examiner of the General Land Office attesting, inter alia, that the subject lands are embraced in a phosphate reserve, and that a report had been received from Geological Survey "indicating that the lands contain no valuable deposits of coal or other minerals except phosphate * * *." The certificate also reports that "the State has filed its request that these selections be made subject to the Act of July 17, 1914 (38 Stat. 509)."

The final two pages of reproduced documents consist of a certificate by the Commissioner of the General Land Office, with an endorsement by the First Assistant Secretary, Department of the Interior. The Commissioner's certificate, dated May 12, 1916, attests to the status of the lands, including the fact that they are within a phosphate reserve, and concludes with a recommendation "that the selections be approved, subject to any valid interfering rights, reserving to the United States all phosphate in the lands so selected, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same * * *." Also recommended by the Commissioner is an exception and reservation to the United States of a right-of-way for canals and ditches across the selected lands.

The endorsement by the First Assistant Secretary signifies that the foregoing selections "are hereby approved," subject to precisely the same conditions, exceptions, and reservations recommended by the Commissioner. This approval of the selections is the operative instrument of conveyance which transferred the title to the State of Wyoming.

Moreover, the official land status and title records maintained by BLM reflect that the United States reserved only phosphate and a right-of-way for canals and ditches in the SW 1/4 NW 1/4, W 1/2 SW 1/4 of sec. 27.

Finally, the statute which conditioned the transfer of the selected land to the State, 38 Stat. 509, provided for a reservation of specific minerals in cases where the land to be conveyed had been withdrawn or classified or reported to be valuable for that particular mineral. As it was certified that this land contained "no valuable deposits of coal or other minerals except phosphate," a reservation to the United States of "all petroleum" would have been unauthorized and contrary to the statute.

2/ Other records indicate this to be the SE 1/4 SE 1/4.

There appears to be no explanation of how the notation reflecting a reservation of "all petroleum" to the United States came to be inserted on the face of the document on file in the deed records of Fremont County, upon which appellant relies. However, we cannot regard that notation as controlling in the face of all of the more authoritative evidence to the contrary. We conclude that BLM's rejection of the offer for these lands was appropriate.

[2] Appellant's lease offer for the remainder of the land in sec. 27 was rejected because BLM found that it had previously been leased for oil and gas, and thus could only be made available for leasing again through the system of simultaneous filings of lease offers, citing Jack E. Lea, 49 IBLA 358 (1980). Appellant denies that this land was the subject of a previous lease because nothing in grantor/grantee index records of Fremont County reflect the issuance of such a lease.

Regardless of what may or may not be reflected in this regard by the records of Fremont County, the official records of Federal public lands maintained by BLM establish conclusively that the land in question was leased for oil and gas to General Crude Oil Company under lease W-49088 on March 28, 1975. The lease terminated on March 31, 1976. Therefore, the land is not subject to leasing in response to offers filed over-the-counter, and appellant's offer was properly rejected for this reason. Jack E. Lea, *supra*; 43 CFR 3112.1-1.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

